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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/719,273	11/20/2003	Dwight Reibling		7475

7590 11/17/2005

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EXAMINER	
LEITH, PATRICIA A	
ART UNIT	**PAPER NUMBER**
1655	

DATE MAILED: 11/17/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/719,273	REIBLING, DWIGHT	
	Examiner	Art Unit	
	Patricia Leith	1655	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) 1-9 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) 1-9 is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date 11/20/03.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Claims 1-9 are pending in the application and were examined on their merits.

Pro-se Applicant

An examination of this application reveals that applicant is unfamiliar with patent prosecution procedure. While an inventor may prosecute the application, lack of skill in this field usually acts as a liability in affording the maximum protection for the invention disclosed. Applicant is advised to secure the services of a registered patent attorney or agent to prosecute the application, since the value of a patent is largely dependent upon skilled preparation and prosecution. The Office cannot aid in selecting an attorney or agent.

A listing of registered patent attorneys and agents is available on the USPTO Internet web site http://www.uspto.gov in the Site Index under "Attorney and Agent Roster." Applicants may also obtain a list of registered patent attorneys and agents located in their area by writing to the Mail Stop OED, Director of the U. S. Patent and Trademark Office, PO Box 1450, Alexandria, VA 22313-1450

Claim Rejections - 35 USC § 112

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-9 rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claims 1-9 are rejected as failing to define the invention in the manner required by 35 U.S.C. 112, second paragraph. The claim(s) are narrative in form and replete with indefinite and functional or operational language. Claim 1 for example does not clearly state what Applicant intends to claim as the invention. Claim 1 is more of a statement. Does Applicant intend to claim whole grain corn, or a method for controlling blood levels with modified whole grain corn? The language which goes to make up the invention must be clearly and positively specified. Note the format of the claims in the patent cited.

The term 'modified' in the claims is ambiguous. Is simply grinding corn considered 'modified'? The Examiner cannot determine the metes and bounds of this phrase and therefore it is deemed indefinite.

Claim 1 recites 'blood level controlling'. This phrase is confusing. Does Applicant mean 'blood glucose level controlling'? 'Blood level' is considered an amount

of blood. It does not appear from the Specification that Applicant intends to claim a method for controlling an amount of blood. Clarification is necessary.

Claim 2 recites 'has two models'. This language is indefinite in that the metes and bounds of 'models' is not clearly delineated. What does Applicant intend to claim?

Claims 5 and 6 refer to more than one claim therefore rendering these claims indefinite. A claim may refer to one claim only; e.g., The modified whole grain corn in any one of claims 1, 2, 3 or 4... Other dependant claims do not refer to a preceding claim rendering these claims indefinite because they lack proper antecedent basis. E.g., claim 2 recites 'Said modified whole grain corn'. This should recite 'The modified whole grain corn of claim 1' in order to possess proper antecedent basis with claim 1'

Claim 3 recites 'said model number 1'. This phrase lacks clear antecedent basis. In order for claim 3 to possess antecedent basis for this phrase, the claim should refer to a preceding claim (e.g., claim 2) and claim 2 should refer specifically to 'model number 1.

Claim 4 recites 'model number 2'. This phrase lacks clear antecedent basis for the same reasoning as set forth above for claim 3. Claim 4 should properly refer to a preceding claim and that preceding claim should specifically recite 'model number 2'.

Claim 4 recites ; being 2 millimeters in diameter'. This phrase lacks antecedent basis thereby rendering the claim indefinite. The Examiner cannot ascertain what '2 millimeters in diameter' is refering to. Is the 2 mm refering to the fine, medium or course ground corn? If there are fine, medium fine and course grains, they will not all be 2 mm. Clarification is necessary.

Again, it is uncertain what Applicant intends to claim as the claims are replete with indefiniteness. However, it appears that Applicant may wish to claim whole grain corn which is ground into fine, medium fine and course grains.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Fulger et al. (US 4,431,647).

The claims were examined as if they were directed toward a composition comprising whole grain corn, softened in water and ground to three finenesses; fine, medium fine and course; wherein the corn is processed in temperatures less than 160

°F. It is noted that claims which state how the product is going to be administered do not materially change the composition.

Milling of corn to produce foodstuffs is well known in the art. It appears that Applicant wishes to obtain a patent for ground corn. Fulger et al. (US 4,431,647) disclose a method for processing foodstuffs via grinding corn to produce endosperm, germ and bran fractions wherein the endosperm is 'brewers grits size' of 2 mm in diameter (Example 1, col.5). The endosperm is then cooked at 121 °C (Again, Example 1).

Although Fulger et al. did not specifically teach wherein the corn was processed in temperatures of less than 160 °F, it is deemed that temperature variations were well within the purview of the ordinary artisan at the time the invention was made. Adjustment of temperatures of known processing methods are considered routine optimization of result-effective variables; routinely practiced in the food art. Further, there is no indication that the temperature of processing would result in a product which was patentably distinct from that of the prior art (i.e., there is no unexpected results shown in the Instant specification).

Claims 1-9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Rafkin-Mervis et al. (2001).

Again, the scope and nature of what Applicant intends to claim is not clear. The claims were examined again as if they were directed toward a method for controlling blood glucose levels via use of ground corn.

It was known in the art that uncooked cornstarch lowered mean blood glucose levels. Rafkin-Mervis et al. (2001) reported studies by Detlofse et al. as well as Kaufman et al. that uncooked cornstarch alone lowered overall blood glucose levels (see entire reference, and especially 'Studies of UCS' pp. 4-5, 'Why UCS works' , p. 4.

Rafkin-Mervis et al. (2001) did not specifically teach wherein the cornstarch was comprised of three different diameters including 2mm.

It is deemed that the grinding process to produce cornstarch will inevitably create granules of cornstarch of varying diameters. One of ordinary skill in the art would have had a reasonable expectation that the granules found in any given batch of cornstarch will vary from super-fine to course. It is further deemed, absent evidence to the contrary, that slight variations of the diameter of cornstarch granules would not substantially or even relatively effect the pharmaceutical effects of cornstarch.

From the teachings of the references, it is apparent that one of ordinary skill in the art would have had a reasonable expectation of success in producing the claimed invention. Therefore, the invention as a whole was *prima facie* obvious to one of

ordinary skill in the art at the time the invention was made, as evidenced by the references, especially in the absence of evidence to the contrary.

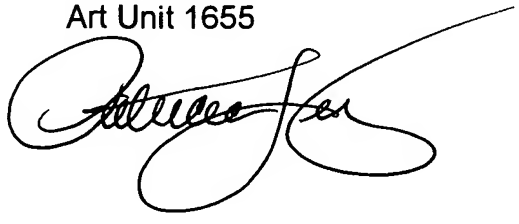
No Claims are allowed.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Patricia Leith whose telephone number is (571) 272-0968. The examiner can normally be reached on Monday - Thursday 8:30am-5:00pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Bruce Campell can be reached on (571) 272-0974. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Patricia Leith
Primary Examiner
Art Unit 1655



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